

ARCHAEOLOGIST[685]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3 and chapter 263B, the Office of the State Archaeologist hereby gives Notice of Intended Action to amend Chapters 1, 2, 4, 6, 7, 8, 10, 11, 12, and 14 and to adopt new Chapter 15, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The proposed amendments are designed to comply with requirements in state and federal law, to provide a contested case procedure consistent with Iowa Code chapter 17A, and to more accurately reflect the operations of the Office of the State Archaeologist.

Any interested person may comment either orally or in writing on the proposed amendments on or before July 20, 2010. Comments should be directed to Linda Langenberg, Office of the State Archaeologist, 700 South Clinton Street Building, The University of Iowa, Iowa City, Iowa 52242-1030; telephone (319)384-0732; E-mail linda-langenberg@uiowa.edu.

These amendments are intended to implement Iowa Code chapter 263B.

The following amendments are proposed.

ITEM 1. Amend subrules 1.1(1), 1.1(4) and 1.1(8) as follows:

1.1(1) In order to meet these statutory objectives under Iowa Code section 263B.2 and Acts of the Sixty-seventh General Assembly, Senate File 2200, sections 26 and 50, the OSA is defined as the primary state interagency service organization for archaeological survey, ~~and~~ evaluation, and mitigation. In this capacity, the OSA is notified of projects that are funded or permitted by the state, ~~and projects, organizations or other entities requiring state permits, or receiving state funding for archaeological salvage and for adverse impact upon such sites~~ or that have the potential for adversely affecting archaeological sites.

1.1(4) The goal of utilizing the ~~above-mentioned~~ procedures in this rule, as they apply to the department of transportation and to any other state agency, is to ensure that neither the state nor any of its legal subdivisions is responsible for the needless destruction of historical objects. If such destruction occurs, or cannot be avoided, ~~the~~ OSA will take proper reasonable action to obtain all possible information concerning such materials prior to destruction. However, OSA will not assume financial responsibility for intermediate- to large-scale actions involving the salvaging of archaeological information.

1.1(8) OSA may perform archaeological contract services for agencies utilizing federal, ~~state-federal, or state funds,~~ or private funding.

ITEM 2. Amend subrule 1.2(2) as follows:

1.2(2) The ~~assistant~~ associate director is responsible for administration of the office, ~~and~~ maintenance of the state repository and documents collection, has functional supervision over the staff ~~and,~~ acts in the absence of the director, ~~and contributes to production of scientific reports and articles pursuant to Iowa Code section 263B.2 in coordination with the specific requests of the director and submission of reports and articles to the director according to a specific annual timetable developed by the director.~~

ITEM 3. Amend rule 685—1.3(263B) as follows:

685—1.3(263B) Further information. The general public may obtain ~~further~~ information on the rules contained in this section and other information concerning the function and operation of OSA either

in writing or ~~calling~~: by telephone to Director, OSA, ~~Eastlawn~~, 700 S. Clinton Street Building, The University of Iowa, Iowa City, Iowa 52242, ~~(319)353-5175~~; (319)384-0751.

This rule is intended to implement Iowa Code section 17A.3 ~~of the Code~~.

ITEM 4. Amend rule 685—2.1(17A) as follows:

685—2.1(17A) Procedures.

2.1(1) Petitions requesting the promulgation, amendment, waiver, or repeal of a rule ~~are~~ shall be made to the director in writing and include the following information:

- a. Name ~~and~~, address, and telephone number of petitioner.
- b. The text of the rule as is; and as proposed.
- c. A concise statement of the reasons for the adoption, amendment, waiver, or repeal of the rule.
- d. The statutes, rules, or orders applicable to the question presented in the petition.

2.1(2) If a waiver is sought pursuant to rule 685—2.2(17A), in addition to the information set forth in subrule 2.1(1), the petition shall also include the following details:

- a. Precise scope and requested duration of the waiver;
- b. The relevant facts that the petitioner believes will support the four criteria set forth in paragraphs 2.2(3) “a” to “d”;
- c. The name, address, and telephone number of all persons who may have knowledge about the facts and circumstances giving rise to the request for waiver; and
- d. The name, address, and telephone number of all persons whom the petitioner believes may be adversely impacted by OSA’s granting of the waiver request.

~~2.1(2)~~ **2.1(3)** Within 60 days OSA will notify the petitioner of its the disposition of the petition within 60 days.

This rule is intended to implement Iowa Code section 17A.4.

ITEM 5. Adopt the following new rule 685—2.2(17A):

685—2.2(17A) Waivers.

2.2(1) For the purposes of this rule, the term “waiver” means action by the state archaeologist that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of the person.

2.2(2) The state archaeologist may grant a waiver from a rule only if OSA has jurisdiction over the rule and the requested waiver is consistent with applicable statutes and Constitutional provisions or other provisions of law. OSA may not waive requirements created or imposed by statute, by the state or federal Constitution, or by another provision of law.

2.2(3) In response to a petition completed pursuant to rule 685—2.1(17A), OSA may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if OSA, based on clear and convincing evidence, finds all of the following:

- a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

2.2(4) OSA may require the petitioner to serve notice in a form prescribed by OSA on all persons to whom notice is required by any provision of law, as well as all persons who may be impacted by the grant or denial of the waiver sought. OSA may additionally require the petitioner to provide a written statement to OSA attesting that notice has been provided.

2.2(5) The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall not otherwise apply to

agency proceedings for a waiver. At a hearing on a petition for a waiver, the petitioner may offer exhibits and provide witnesses or testimony. The hearing may be in person, telephonic, or in any other format chosen by OSA. The state archaeologist, or the designee of the state archaeologist, shall preside over the hearing.

2.2(6) An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued. OSA may place any condition on a waiver that OSA finds necessary and supportable by the law.

2.2(7) The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of OSA, upon consideration of all relevant factors. OSA shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that OSA should exercise its discretion to grant a waiver from an OSA rule.

2.2(8) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information that OSA is authorized or required to keep confidential. Accordingly, OSA may redact confidential information from petitions or orders prior to public inspection.

2.2(9) Semiannually, OSA shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying OSA's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

2.2(10) A waiver issued by OSA pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, OSA issues an order finding any of the following:

- a. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

2.2(11) Judicial review of the OSA decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 6. Amend **685—Chapter 4**, title, as follows:

PROCEDURES FOR INFORMAL SETTLEMENTS IN CONTESTED CASES

ITEM 7. Adopt the following **new** rules 685—4.2(17A) to 685—4.31(17A):

685—4.2(17A) Contested cases. Except when inconsistent with Iowa Code chapter 263B, this chapter applies to contested case proceedings conducted by OSA.

685—4.3(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the state archaeologist, the designee of the state archaeologist or, under certain circumstances, the administrative law judge.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the state archaeologist did not preside.

685—4.4(17A) Time requirements.

4.4(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

685—4.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the OSA action in question. The request for a contested case proceeding should state the name and address of the requester, identify the specific OSA action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

685—4.6(17A) Notice of hearing.

4.6(1) Delivery. Delivery of the notice of hearing by OSA constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If OSA or another party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for OSA or the state and of parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge.

685—4.7(17A) Presiding officer.

4.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the state archaeologist or the designee of the state archaeologist.

4.7(2) The state archaeologist may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b. An administrative law judge is unavailable to hear the case within a reasonable time.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

4.7(3) The state archaeologist shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the state archaeologist. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

4.7(5) Unless otherwise provided by law, the state archaeologist, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

685—4.8(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, OSA in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

685—4.9(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

685—4.10(17A) Disqualification.

4.10(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.10(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information

which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other OSA functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code chapter 17A.

4.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.10(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay pursuant to these rules.

685—4.11(17A) Consolidation—severance.

4.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

685—4.12(17A) Pleadings.

4.12(1) Petition. A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

- a. The persons or entities on whose behalf the petition is filed;
- b. The particular provisions of statutes and rules involved;
- c. The relief demanded and the facts and law relied upon for such relief; and
- d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.12(2) Answer. An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.12(3) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or at the discretion of the presiding officer, who may impose terms or grant a continuance.

685—4.13(17A) Service and filing of pleadings and other papers.

4.13(1) Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or OSA, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.13(2) Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.13(3) After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with OSA.

4.13(4) Except where otherwise provided by law, a document is deemed filed at the time it is delivered to OSA, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.13(5) Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or university mail).

(Date)

(Signature)

685—4.14(17A) Discovery.

4.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in rule 685—4.4(17A).

4.14(3) The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

4.14(4) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

685—4.15(17A) Subpoenas.

4.15(1) Issuance.

a. An OSA subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.15(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

685—4.16(17A) Motions.

4.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of OSA or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.16(3) The presiding officer may schedule oral argument on any motion.

4.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of OSA or an order of the presiding officer.

685—4.17(17A) Prehearing conference.

4.17(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

4.17(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.17(3) In addition to the requirements of subrule 4.17(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.17(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

685—4.18(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.18(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived

by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. OSA may waive notice of such requests for a particular case or an entire class of cases.

4.18(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

685—4.19(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with OSA rules. Unless otherwise provided, a withdrawal shall be with prejudice.

685—4.20(17A) Intervention.

4.20(1) A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.20(2) Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.20(3) The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.20(4) If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

685—4.21(17A) Hearing procedures.

4.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.21(2) All objections shall be timely made and stated on the record.

4.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.21(6) Witnesses may be sequestered during the hearing.

4.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. Parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

685—4.22(17A) Evidence.

4.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.22(3) Evidence in the proceeding shall be confined to the issues to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

685—4.23(17A) Default.

4.23(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.23(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 4.23(3) is filed and served on all

parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision on the merits is filed within the time provided by rule 685—4.28(17A).

4.23(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

4.23(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown, in accordance with Iowa Rule of Civil Procedure 1.977. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

4.23(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

685—4.24(17A) Ex parte communication.

4.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another's investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17.

4.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties and continue for as long as the case is pending.

4.24(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties prior to seeking to continue hearings or other deadlines.

4.24(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses

made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

4.24(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 4.24(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

4.24(6) Promptly after being assigned to serve as presiding officer, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

4.24(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of OSA, a final decision imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

685—4.25(17A) Recording costs. Upon request, OSA shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

685—4.26(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state archaeologist may review an interlocutory order of the presiding officer. In determining whether to do so, the state archaeologist shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by OSA at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order but no later than the time for compliance with the order or the date of hearing, whichever is first.

685—4.27(17A) Final decision.

4.27(1) When the state archaeologist presides over the reception of evidence at the hearing, the decision is a final decision.

4.27(2) When the state archaeologist does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of OSA without further proceedings unless there is an appeal to, or review on motion of, the state archaeologist within the time provided in rule 685—4.28(17A).

685—4.28(17A) Appeals and review.

4.28(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the state archaeologist within 30 days after issuance of the proposed decision.

4.28(2) Review. The state archaeologist may initiate review of a proposed decision on the state archaeologist's own motion at any time within 30 days following the issuance of such a decision.

4.28(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with OSA. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a.* The parties initiating the appeal;
- b.* The proposed decision or order appealed from;

- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.28(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal, or by a nonappealing party, within 14 days of service of the notice of appeal. The state archaeologist may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

4.28(5) Scheduling. OSA shall issue a schedule for consideration of the appeal.

4.28(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state archaeologist may resolve the appeal on the briefs or provide an opportunity for oral argument. The state archaeologist may shorten or extend the briefing period as appropriate.

685—4.29(17A) Applications for rehearing.

4.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.28(4), the applicant requests an opportunity to submit additional evidence.

4.29(3) Time of filing. The application shall be filed with OSA within 20 days after issuance of the final decision.

4.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, OSA shall serve copies on all parties.

4.29(5) Disposition. Any application for a rehearing shall be deemed denied unless OSA grants the application within 20 days after its filing.

685—4.30(17A) Stays of OSA actions.

4.30(1) When available.

a. Any party to a contested case proceeding may petition OSA for a stay of an order issued in that proceeding or for other temporary remedies, pending review by OSA. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The state archaeologist may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition OSA for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.30(2) When granted. In determining whether to grant a stay, the presiding officer or state archaeologist shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

4.30(3) Vacation. A stay may be vacated by the issuing authority by application of any party to OSA or by OSA acting sua sponte.

685—4.31(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached,

a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the Iowa Rules of Civil Procedure and these administrative rules that govern such motions.

ITEM 8. Adopt the following new implementation sentence in **685—Chapter 4**:

These rules are intended to implement Iowa Code chapter 17A.

ITEM 9. Amend paragraph **6.2(1)“d”** as follows:

d. OSA prints at least one number of the Reports series annually if appropriate manuscripts and funding are available.

ITEM 10. Amend subrules 7.1(1) and 7.1(4) as follows:

7.1(1) ~~Individuals~~ Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

7.1(4) OSA accepts donations of artifacts or artifact collections in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) provided that explanatory materials, ~~accompany collections~~ such as site sheets, site records and all pertinent locational information, accompany collections. Donated specimens are required to be washed and reasonably identified. OSA will not determine the monetary value of artifacts.

ITEM 11. Amend subrules 8.1(1) and 8.1(2) as follows:

8.1(1) ~~Individuals~~ Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

8.1(2) Donations of materials are accepted in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) in the following priority:

a. to e. No change.

ITEM 12. Amend subrule 10.1(2) as follows:

10.1(2) ~~The~~ OSA staff will cooperate fully with researchers, aiding with the location of materials needed. Work areas will be provided for reasonable lengths of time. All publications or reports resulting in full or in part from the use of OSA collections and facilities ~~will~~ shall include an appropriate acknowledgment. ~~Two copies~~ One print and one electronic copy of all such publications or reports shall be sent to ~~the~~ OSA for inclusion in the documents collection.

ITEM 13. Amend rule 685—11.1(263B) as follows:

685—11.1(263B) Procedures. OSA is the appropriate agency to contact regarding the discovery of human physical remains or suspected human physical remains believed to be over 150 years ~~old~~ in age. ~~The~~ OSA should be notified of the location of areas believed to represent ancient burial grounds. The director has the authority to deny permission to disinter human physical remains from aboriginal ossuaries, grave sites, cemeteries or any other archaeological deposit that are determined to have state and national significance from the standpoint of history or science.

11.1(1) A site will be judged significant if it has been demonstrated by archaeological investigation, including but not limited to excavation and analysis appropriate to the context, that it possesses one or more of the qualities listed below:

a. to c. No change.

11.1(2) No change.

11.1(3) If a site is determined to be significant by these rules and is designated by the director to be preserved, any human physical remains recovered during testing may be reinterred at the original burial site rather than at one of the designated state cemeteries. Sites that are judged not to be significant will be salvaged by ~~the~~ OSA or its designated representative to the degree permitted by state available funding

and available staff. In such cases, materials recovered will be the subject of a written report and the human remains will be reburied in one of the designated state cemeteries.

11.1(4) and **11.1(5)** No change.

11.1(6) ~~The~~ OSA will assist with the ongoing identification of ancient cemetery areas to the degree permitted by state available funding and available staff. ~~The~~ OSA will coordinate such actions with appropriate federal, state, county, municipal or private concerns.

11.1(7) No change.

ITEM 14. Amend **685—Chapter 12**, title, as follows:

~~STATE SITE RECORD AND INVENTORY SYSTEM~~ IOWA ARCHAEOLOGICAL SITE FILE

ITEM 15. Amend rules 685—12.1(263B) and 685—12.2(263B) as follows:

685—12.1(263B) Definition. Pursuant to the statutory responsibilities of locating and recovering archaeological and paleontological remains, ~~the~~ OSA maintains ~~site records and prepares and periodically updates the official site inventory for the state~~ the Iowa Archaeological Site File in digital and paper formats. ~~The~~ OSA is the appropriate agency for the public or other agencies to contact to report sites or to receive information concerning known sites in the inventory. ~~The~~ OSA assigns all official site numbers following written guidelines which are available from ~~the~~ OSA upon request.

685—12.2(263B) The Iowa site records Archaeological Site File. ~~Specific locational and descriptive information on each reported site is placed on official Iowa Site Record sheets. Blank sheets and a packet of information explaining how they are to be completed are available from OSA upon request.~~

12.2(1) ~~The official site numbers used on site record sheets and in the inventory in the Iowa Archaeological Site File conform to the Smithsonian trinomial system which incorporates state and county designations coded with sequentially numbered sites within each county.~~

12.2(2) ~~Numbers are usually assigned on an individual basis as needed. In special cases, blocks of site numbers shall be allocated by OSA to researchers to facilitate projects. Individuals, firms, and agencies that are assigned site numbers must submit site data for the assigned numbers within six months of the date assigned.~~

~~a. Blocks of site numbers will be issued for periods of time up to one year.~~

~~b. If an individual or agency fails to utilize assigned numbers within the period allowed, the numbers may be renewed or revoked depending upon the circumstances.~~

12.2(3) If an individual, firm, or agency fails to submit site data within the period allowed, the numbers may be renewed or revoked depending upon the circumstances. OSA may revoke site number assignment privileges to any individual, firm, or agency that consistently fails to submit data for its assigned site numbers.

ITEM 16. Rescind rule 685—12.3(263B) and adopt the following new rule in lieu thereof:

685—12.3(263B) Iowa site database. Specific locational and descriptive information on each reported site is recorded in the Iowa Archaeological Site File database in a data format developed by OSA. The electronically digitized, mapped location of each reported site is part of the Iowa Archaeological Site File database. Information explaining the process of reporting site information is available from OSA upon request.

12.3(1) OSA shall develop and maintain a system for Internet access to the Iowa Archaeological Site File database. Information about access to the system is available from OSA on request.

12.3(2) The Internet system is updated on a regular basis as new site information is added to the Iowa Archaeological Site File.

ITEM 17. Amend **685—Chapter 12**, implementation sentence, as follows:

~~This chapter is~~ These rules are intended to implement Iowa Code section 263B.2 of the Code.

ITEM 18. Amend rules 685—14.3(263B) and 685—14.4(263B) as follows:

685—14.3(263B) Iowa site records and site location maps Archaeological Site File.

14.3(1) Upon request, the OSA will make the ~~Iowa site records and site location maps~~ Iowa Archaeological Site File including site location maps available to the following individuals for inspection and copying:

- a. Members of the Association of Iowa Archaeologists;
- b. Members of the ~~Society~~ Register of Professional Archaeologists;
- c. Qualified archaeologists;
- d. OSA staff;
- e. Students or researchers under the supervision of a person meeting any of the above criteria;
- f. Amateur archaeologists, at the discretion of the state archaeologist;
- g. Other persons if ~~the~~ OSA determines that disclosure will not result in unreasonable risk of damage to or loss of the resource or site.

14.3(2) ~~The~~ OSA maintains a log of all non-OSA staff users of the ~~Iowa site records~~ Archaeological Site File and associated site location maps. The log includes the name and address of each user and the date of use.

14.3(3) One copy of any report or publication utilizing information obtained from the ~~Iowa site records~~ Archaeological Site File shall be sent to ~~the~~ OSA for inclusion in the documents collection.

14.3(4) Notwithstanding any of the preceding provisions, the state archaeologist retains authority to deny access of any individual to the ~~Iowa site records and site location maps~~ Archaeological Site File including site location maps, in accordance with Iowa Code section 22.7(21)(20), if release of the information will result in unreasonable risk of damage to or loss of archaeological resources. An appeal committee consisting of three members of ~~the~~ OSA advisory committee shall review contested cases and make recommendations to the university of Iowa vice president of educational development and for research.

14.3(5) The state archaeologist may enter into cooperative agreements with the state historical society and other agencies in order to make available ~~copies of access to the~~ Iowa site records Archaeological Site File for planning purposes.

14.3(6) Documents containing information on the specific location of any archaeological resource or site shall be considered an extension of the ~~Iowa site records~~ Archaeological Site File and shall be treated in similar fashion. Such documents include those archived at OSA or released by OSA to agencies or individuals.

685—14.4(263B) Policy on copying charges. Anyone making a request for reproduction ~~of from the~~ Iowa site records Archaeological Site File and OSA documents including electronic records will be charged for services.

ITEM 19. Adopt the following new 685—Chapter 15:

CHAPTER 15
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

685—15.1(17A,22,263B) Definitions. As used in this chapter:

“Agency” means the office of state archaeologist (OSA).

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public and records or information contained in records that are specified as confidential by Iowa Code section 22.7, Iowa Code section 263B.10, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

“Custodian” means the state archaeologist or a person lawfully delegated authority by the state archaeologist to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1.

“*Record system*” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

685—15.2(17A,22,263B) Requests for access to records.

15.2(1) *Location of record.* A request for access to a record should be directed to the state archaeologist at OSA, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242; or telephone (319)384-0751.

15.2(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal or university holidays.

15.2(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

15.2(4) *Response to requests.* Access to an open record shall be provided promptly, unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.7 or 22.8. Upon request, the custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.7 or 22.8, or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 685—15.3(17A,22,263B) and other applicable provisions of law.

15.2(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

15.2(6) *Copying.* A reasonable number of copies of an open record may be made in the agency’s office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

15.2(7) *Fees.*

a. OSA may charge the photocopy fee set forth in its “Fees for Services” document, which reflects the actual cost of such photocopies. The current “Fees for Services” document is available from OSA and posted on the OSA Web site.

b. In addition to photocopy charges, an hourly fee may be charged for actual OSA expenses in supervising the examination and copying of requested records. OSA shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly compensation of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

685—15.3(17A,22,263B) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may

have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

685—15.4(17A,22,263B) Disclosures without the consent of the subject.

15.4(1) Open records are routinely disclosed without the consent of the subject.

15.4(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Without limiting the custodian's discretion to disclose records pursuant to Iowa Code section 22.7 and applicable law, the following are nonexhaustive examples of instances where disclosure, if lawful, can generally occur without notice to the subject:

a. For a routine use as defined in rule 685—15.5(17A,22,263B) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

685—15.5(17A,22,263B) Routine use.

15.5(1) Definition. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

15.5(2) Examples. To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential or exempt records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the agency or officer which the office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

685—15.6(17A,22,263B) Consensual disclosure of confidential records.

15.6(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 685—15.3(17A,22,263B).

15.6(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

685—15.7(17A,22,263B) Release to subject.

15.7(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 685—15.3(17A,22,263B). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

15.7(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

685—15.8(17A,22,263B) Availability of records.

15.8(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

15.8(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure under Iowa Code section 22.7.

b. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 1.503(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the code of professional responsibility, and case law.

c. Records relating to the nature and location of archaeological resources or sites, which are exempt from disclosure pursuant to Iowa Code section 22.7(20) and Iowa Code section 263B.10.

d. Personal information in confidential personnel records pursuant to Iowa Code section 22.7(11).

e. Any other records made confidential by law.

685—15.9(17A,22,263B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 685—15.1(17A,22,263B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by OSA are personnel and employment management information systems, the records for which are collected pursuant to the

authority of Iowa Code chapter 263B. Storage is in paper form, though certain employment information may be incorporated into electronic records which could then be matched, collated, or compared.

685—15.10(17A,22,263B) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 685—15.1(17A,22,263B). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, some records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

15.10(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

15.10(2) Publications. News releases, annual reports, project reports, and agency newsletters are available through OSA's Web site or from the agency. Any news releases, annual or project reports, or newsletters may contain information about individuals, including agency staff members.

15.10(3) Statistical reports. Periodic reports for various OSA programs may be available from OSA.

15.10(4) Grants/contracts. OSA may have communications with prospective granting agencies or clients about grants or contracts.

These rules are intended to implement Iowa Code chapter 22.